

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI**

**DR. DONALD RAGGIO
DR. CHRIS RAGGIO**

PLAINTIFFS

V.

CAUSE NO. 14-71

**MTGOX, Inc., a Delaware corporation;
CODE COLLECTIVE, LLC, a New York limited liability company;
JED McCaleb, an individual**

DEFENDANTS

**JED MCCALEB AND CODE COLLECTIVE, LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON MEASURE OF DAMAGES**

Defendants Jed McCaleb and Code Collective, LLC (collectively, "McCaleb") hereby file this Motion for Partial Summary Judgment as to the proper measure of damages in this case and in support hereof state as follows:

1. Plaintiffs filed this suit based on an alleged theft of approximately 9,400 bitcoins from their account on the MTGOX bitcoin exchange over seven years ago.¹
2. Plaintiffs wrongly maintain they are entitled to damages in the amount of the market value of bitcoins today, without any basis in law or fact for such a demand.
3. Mississippi law limits the measure of damages to the value of the property at the time of loss, and there is no factual evidence of fraud or intentional acts by McCaleb that could support an award of punitive damages or otherwise affect that law.
4. Moreover, Plaintiffs failed to "cover" or mitigate their damages in any way.

¹ A collection of Relevant Emails between Drs. Donald and Chris Raggio on the one hand, and McCaleb on the other, is attached as Exhibit A. These emails reflect the opening of the account and Plaintiffs' notification of the alleged theft to McCaleb. See Exhibit A at pp. 4-6.

5. Thus, McCaleb is entitled to partial summary judgment that, in the event Plaintiffs succeed on any claim they have asserted, the measure of damages is the value of the bitcoins at the time of the theft.

ITEMIZATION OF THE FACTS RELIED UPON AND NOT GENUINELY DISPUTED

6. Plaintiffs allege that from January 7 to January 9, 2011, someone stole approximately 9,400 bitcoins from their MTGOX account. *See Affidavit of Chris Raggio, attached as Exhibit B, at ¶ 5; Amended Complaint, attached as Exhibit C, at ¶ 11.*

7. At the time of the theft, the value of those bitcoins was approximately \$3,100 (\$0.33 per bitcoin). *See Affidavit of Jed McCaleb, attached as Exhibit D, at ¶ 6.*

8. There was no written contract or terms of use for MTGOX users at the time. *See Exhibit D, at ¶ 5.*

9. McCaleb sold the MTGOX exchange on February 11, 2011 to Tibanne KK, a Japanese company owned by Mark Karpeles. *See Exhibit D, at ¶ 8.*

10. The Plaintiffs began corresponding with Tibanne KK through Mark Karpeles about the stolen bitcoin and claim Karpeles informed them in March 2012 that he was not responsible for recovering their bitcoins. *See Exhibit B, at ¶ 15.*

11. At this time in March of 2012, the market value of bitcoin reached approximately \$5.40. *See Historical Pricing Charts from Coindesk.com, attached as Exhibit E; see also Request for Judicial Notice being filed contemporaneously with Motion.*

12. In February 2014, MTGOX Co., Ltd.—MTGOX’s new owner—filed for bankruptcy in Japan. *See*, Reuters, “Mt. Gox files for bankruptcy, hit with lawsuit”, February 28, 2014, attached as Exhibit F.²

13. The Raggios never filed a proof of claim in the MTGOX bankruptcy. *See* Plaintiffs’ Responses to Defendants’ Second Set of Requests for Admission, attached as Exhibit H, at p. 1.

14. Plaintiffs never purchased substitute bitcoins to replace the ones they claim were stolen. *See* Plaintiffs’ Supplemental Discovery Responses served June 25, 2018 and related documents, collectively attached Exhibit I, at 2, 6-7.

15. There is no evidence to support any claims that McCaleb embezzled, stole, or converted the Plaintiffs’ bitcoins to his own use. *See*, Deposition of Jed McCaleb, attached as Exhibit J; *see also* June 5, 2018 Hearing Transcript, attached as Exhibit K, at 26-34, 40 (this Court noted it considered matters pertaining to alleged embezzlement or fraud irrelevant).

CONCLUSION

16. Under Mississippi law governing the claims asserted by Plaintiffs, the measure of damages is the value of the property at the time of the theft, and there is no evidence to support any greater award for any alleged wrongful acts.

WHEREFORE, for the reasons stated above, and those set forth in McCaleb’s Memorandum in Support of this Motion, McCaleb is entitled to partial summary judgment that the measure of damages in this case is limited to the value of the stolen bitcoin at the time of the theft.

² MTGOX Co., Ltd. also filed a bankruptcy proceeding in Texas. *See* Docket of U.S. Bankruptcy Court for the Northern District of Texas (Dallas), attached as Exhibit G.

Respectfully submitted, this the 5th day of October, 2018.

**JED McCaleb and
CODE COLLECTIVE, LLC**

By: /s/ Edwin S. Gault Jr.
EDWIN S. GAULT, JR. (MSB #10187)
MANDIE B. ROBINSON (MSB #100446)
T. PEYTON SMITH (MSB #103867)

*Attorneys for Defendants Jed McCaleb and
Code Collective, LLC*

OF COUNSEL:

FORMAN WATKINS & KRUTZ LLP
210 East Capitol Street, Suite 2200 (39201)
P.O. Box 22608
Jackson, MS 39225-2608
Phone: (601) 960-8600
Facsimile: (601) 960-8613
win.gault@formanwatkins.com
mandie.robinson@formanwatkins.com
peyton.smith@formanwatkins.com

ETHAN JACOBS (admitted *pro hac vice*)
HOLLAND LAW LLP
220 Montgomery Street, Suite 800
San Francisco, California 94104
Telephone: (415) 200-4984
ejacobs@hollandlawllp.com

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, I served a true and correct copy of the foregoing document via electronic mail to the following counsel of record:

Armin J. Moeller, Jr.
Walter H. Boone
Christine Crockett White
Jonathan P. Dyal
Andy Lowry
Patrick Everman
Perry P. Taylor
Balch & Bingham, LLP
188 East Capitol Street
Jackson, MS 39201-2608
wboone@balch.com
cwhite@balch.com
alowry@balch.com

Attorneys for Plaintiffs

THIS, the 5th day of October, 2018.

/s/ Edwin S. Gault, Jr.
EDWIN S. GAULT, JR.